U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 0 3 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Professional Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Rachel M Florio for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Nebraska Service Center. On June 15, 2009, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR).[1] In a November 18, 2009 Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner is a developer and producer of fruit and vegetable seeds. It seeks to employ the beneficiary permanently in the United States as a senior crop scientist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. §1153(b)(2).[2] As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). United States Citizenship and Immigration Services (USCIS) approved the petition on August 5, 2007. The director subsequently determined that the petition had been approved in error as the petitioner had failed to establish that a valid employment relationship exists between it and the beneficiary and that a bona fide job opportunity was available to U.S. workers. The director revoked the approval accordingly.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[3]

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[1] The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet its burden of proof. The director's NOIR sufficiently detailed the evidence of the record, pointing out such evidence was not credible in light of derogatory information relating to the beneficiary's claimed employment that had emerged subsequent to the approval of the petition and thus was properly issued for good and sufficient cause.

[2] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2).

[3] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B,

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd,* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (AAO's *de novo* authority is well recognized by the federal courts).

As a threshold issue, and although not noted by the director in either the NOIR or NOR,[1] the petition cannot be approved because the petitioner did not intend to employ the beneficiary in the certified job of senior crop scientist, but rather had employed him as its president and chief executive officer since his promotion to these positions on December 16, 2006. Therefore, the petitioner is not offering the beneficiary a job as a senior crop scientist as certified in the ETA Form 9089.

The labor certification is evidence of an individual alien's admissibility under section 212(a)(5)(A)(i) of the Act, which provides:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The regulation at 20 C.F.R. § 656.30(c)(2) provides:

> A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and the area of intended employment stated on the *Application for Alien Employment Certification* (Form ETA 750) or the *Application for Permanent Employment Certification* (Form ETA 9089).

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which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In evaluating the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the ETA Form 9089 was accepted on September 19, 2006. The proffered wage as stated on ETA From 9089 is $23.79 per hour or $49,483.20 per year based on 40 hours per week. The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. In this matter, Part H, line 3, of the ETA Form 9089 lists the proffered job as "Senior Crop Scientist," lines 4 and 4-B, of the labor certification reflect that a master's degree in agriculture, agronomy, or crop science is the minimum level of education required. Line 6 reflects that 24 months of experience in the offered job of senior crop scientist is required to fill the proffered position. Line 8 reflects that no combination of education or experience is acceptable in the alternative. Line 9 reflects that a foreign educational equivalent is acceptable. In an attachment to line 11, the offered job's duties are listed as:

> (1) Conducts research in plant metabolic engineering and chemical composition and processes of plant to improve crop yield, nutrition, and the quality of seed; (2) Performs gene expression integration with trait development and achieves transgenic event evaluation and development by supporting output trait field and greenhouse breeding programs; (3) Prepares analysis on the breeding, physiology, and management of crops and utilizes genetic engineering to develop crops resistant to pests and drought; (4) Plans and designs field and greenhouse experiments, develops data summaries, and interprets results.

The director approved the petition on August 5, 2007, but subsequently determined that the petition had been approved in error as the petitioner had failed to establish that a valid employment

relationship exists between it and the beneficiary and that a bona fide job opportunity was available to U.S. workers. The director revoked the approval accordingly on November 18, 2009.

On appeal, counsel asserted that the beneficiary did not have any type of ownership interest in the petitioner and that there was no familial relationship between the beneficiary and the petitioner's owners, stockholders, corporate officers, and incorporators. Counsel contended that the petitioner had two shareholders; " a corporation registered in Hong Kong and an individual residing in Xinjiang, China," with owning 71% of the petitioner's shares and owning 29% of the petitioner's shares. Counsel noted that the beneficiary's relationship to the petitioner's owners, and was that of employee and employer and that the beneficiary had no control or influence regarding the hiring decision for the offered job of senior crop scientist. Counsel acknowledged that the beneficiary was promoted to the position of president of the petitioner on December 18, 2006, and that only after such date was he allowed to control and influence the petitioner's hiring decisions. Counsel submitted the Certificate of Incorporation and Memorandum of Association of the petitioner's Bank of America Combined Account Statement dated June 18, 2002, copies of pages from the beneficiary's passport, and a copy of letter dated December 18, 2006, reflecting the petitioner's promotion of the beneficiary to the position of president.

The letter dated December 18, 2006 is signed by who listed his position with the petitioner as chairman. stated the following in pertinent part to the beneficiary in this letter:

> Based on your performance, the corporation, , decide[d] to promote your[sic] from Senior Crop Scientist to the President of the Corporation.
>
> As you understand the corporation is specialized on nutrition food products and new vegetable seeds, your main job duty will remain the same as senior crop scientist. But you will also [be] responsible for company's daily operation, such as explore new research project, market analysis, new customer contact, budget planning and management. For larger expenses and strategic development policy, you still have to report back to the board and myself for approval[.]
>
> Your present annual remuneration is $62,462.00. Your future annual salary as the president will be $72,000.00 with an option of a year-end bonus based on the research and business achievements. The company also agreed to pay your medical insurance. Except the US government legal holidays, the corporation also agrees to provide 2 weeks vacation time (10 work days with direct record) per year.

On March 27, 2012, the AAO issued a Request for Evidence (RFE) to the petitioner and counsel. The AAO noted that the evidence in the record reflected that more likely than not that the petitioner does not intend to employ the beneficiary in the certified job of senior crop scientist, but rather to

employ him as its president and chief executive officer. The job offered by the petitioner to the beneficiary in the Form I-140, and as certified by the DOL on the ETA Form 9089, is senior crop scientist. However, the petitioner and counsel both subsequently acknowledged that the petitioner has employed the beneficiary as its president since his promotion to this position on December 18, 2006. Although the petitioner claimed that the beneficiary's job duties remain unchanged after his promotion to president, it appeared that the beneficiary's duties in the position of president are that of corporate executive and manager of research and development. The beneficiary had also been compensated at a much higher rate than the proffered wage of $49,483.20. For example, in 2007, the year that the instant petition was originally approved, the beneficiary was paid $72,000.00, an increase of approximately 45% over the certified salary of a senior crop scientist. The AAO informed counsel and the petitioner that pursuant to 20 C.F.R. § 656.30(c)(2), a labor certification is only valid for the particular job opportunity certified therein. The AAO requested that the petitioner provide a detailed description of the job duties of its president and an explanation as to how such duties are the same duties of the certified job of senior crop scientist.

In response to the RFE dated March 27, 2012, submitted a statement dated April 6, 2012, in which he declared the following in pertinent part:

> The position of president with our company is executive in nature and the president reports to the Board of Director on all major corporate matters. Our company also has executive vice president, managing daily business operation and making personnel decisions such as hiring, promoting and firing[.] The job duties of our president are detailed as follows: (1) Responsible for managing the overall administrative, financial, business, and R&D operations; (2) Formulating the company's overall administrative and business operation policies, development plans and strategies; (3) Networking with major providers, chambers of commerce, and trade/professional associations for business opportunities.
>
> As a small business with 6 employees, we don't need a full-time president to devote all his time and energy to business strategy formulation and hiring and firing. That's [the] reason why we promoted the beneficiary and made him wear two hats in December 2006: senior crop scientist and president. The beneficiary was hired as a senior crop scientist and his job duties as a senior crop scientist remain unchanged. His job duties include: (1) Conducts research in plant metabolic engineering and chemical composition and processes of plant to improve crop yield, nutrition, and the quality of seed; (2) Performs gene expression integration with trait development and achieves transgenic event evaluation and development by supporting output trait field and greenhouse breeding programs; (3) Prepares analysis on the breeding, physiology, and management of crops and utilizes genetic engineering to develop crops resistant to pests and drought; (4) Plans and designs field and greenhouse experiments, develops data summaries, and interprets results.
>
> But, in addition to his job as a senior crop scientist, the beneficiary also performed some of the executive duties such as serving as the Agent of Service for Process for

> the company and modifying the company's business model. He made significant contributions to the company's growth, but a service as president of the company is limited, secondary, temporary and additional. He spent about 8% of his time on job duties as president while he spent 92% of his time on his primary duties of senior crop scientist. If the company finds an ideal candidate for president, the beneficiary will no longer wear the hat of president. We intend to employ him in the certified job of senior crop scientist.
>
> His salary increase has nothing to do with his additional title of president. The proffered wage of $49,483.20 per year on ETA Form 9089 came from the prevailing wage determination made by the California Employment Development Department (EDD). A copy of Prevailing Wage Request determined by the EDD is enclosed. When we filed for H-1B visa on his behalf in November 2005, we offered the beneficiary $62,462.00 to meet the requirement of BLS prevailing wage, which was $59,176.00. A copy of the Certified Labor Condition Application for the H-1B Nonimmigrant Visa Program is enclosed. So the salary increase is not the result of change of his job duties or title, but the result of compliance with the H-1B prevailing wage regulations.

In support of this statement, the petitioner provided its Prevailing Wage Request to the California EDD for the beneficiary in the offered job of senior crop scientist as the beneficiary of a separate H-1B nonimmigrant visa petition previously filed by the petitioner, a copy of a DOL Form ETA 9035E, Labor Condition Application for H-1B and H-1B1 Nonimmigrants, and copies of financial documents requested by the AAO in the RFE issued on March 27, 2012.

In his letter dated December 18, 2006, admitted that the duties of the beneficiary as the petitioner's president include (1) responsibility for managing the overall administrative, financial, business, and R&D operations; (2) formulating the company's overall administrative and business operation policies, development plans, and strategies; and (3) networking with major providers, chambers of commerce, and trade/professional associations for business opportunities, in addition to his previously stated duties as senior crop scientist. Clearly, the beneficiary is performing the duties of the offered job of senior crop scientist, as well as additional duties and responsibilities as the petitioner's president and chief executive officer since his promotion in December of 2006. This promotion reflected a material and substantial change in the duties performed by the beneficiary during his employment with the petitioner. The fact that the beneficiary received a substantial increase in wages as the petitioner's president in 2007, the beneficiary was paid $72,000.00, an increase of approximately 45% over the certified salary of $49,483.20 for senior crop scientist, only serves to demonstrate the material and substantial change in the beneficiary's employment when he was promoted from senior crop scientist to president. Therefore, it cannot be concluded the beneficiary's employment with the petitioner since December 18, 2006 is limited to the same duties of the offered job of senior crop scientist as certified on the ETA Form 9089.

Furthermore, characterizations regarding the beneficiary's promotion to the position of president of the petitioner in his statement dated April 6, 2012 tend to contradict and be in conflict

with prior statements he made in his letter of promotion to the beneficiary dated December 18, 2006. Specifically, previously stated that the reason for the beneficiary's promotion from senior crop scientist to president of the petitioner was based upon the beneficiary's performance in his letter dated December 18, 2006. In this letter, declared that the beneficiary would retain his job duties as senior crop scientist and also be responsible for the company's daily operation, such as exploring new research projects, market analysis, new customer contacts, budget planning and management as the petitioner's president. noted that the beneficiary's annual salary would increase from $62,462.00 to $72,000.00 with additional compensation to include an option for a year-end bonus, paid medical insurance, two weeks paid vacation, and leave on Federal holidays in the letter dated December 18, 2006. However, in his statement dated April 6, 2012, stated that the beneficiary's salary increase was not due to his promotion, but rather to have his wages correspond to a prevailing wage determination made by the California EDD. Further, claimed that the petitioner's executive vice president, manages daily business operations and makes personnel decisions rather than the beneficiary in his capacity as the petitioner's president. Lastly, failed to acknowledge that the beneficiary's employee compensation increased to $72,000.00 per year as president of the petitioner with additional compensation to include an option for a year-end bonus, paid medical insurance, two weeks paid vacation, and leave on Federal holidays in his statement dated April 6, 2012.

Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The conflicting and contradictory statements of regarding the nature and capacity of the beneficiary's employment as president and chief executive of the petitioner seriously impair the credibility of his testimony. Clearly, the beneficiary's current employment duties as the petitioner's president and chief executive officer expanded upon, significantly altered, and exceeded the previously described duties of the offered job of senior crop scientist, which are narrow in scope and highly technical in nature. Consequently, the petition cannot be approved because the petitioner did not intend to employ the beneficiary in the certified job of senior crop scientist, but rather had employed him as its president and chief executive officer since his promotion to these positions on December 18, 2006.

The next issue to be examined in these proceedings is whether the petitioner has made a *bona fide* job offer or was there a pre-existing business relationship between the petitioner and the beneficiary that affected the job recruitment and labor certification process.

Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401 (Comm'r 1986), discussed a beneficiary's 50% ownership of the petitioning entity. The decision quoted an advisory opinion from the Chief of DOL's Division of Foreign Labor Certification as follows:

> The regulations require a 'job opportunity' to be 'clearly open.' Requiring the job opportunity to be bona fide adds no substance to the regulations, but simply clarifies that the job must truly exist and not merely exist on paper. The administrative interpretation thus advances the purpose of regulation 656.20(c)(8). Likewise requiring the job opportunity to be bona fide clarifies that a true opening must exist, and not merely the functional equivalent of self-employment. Thus, the administrative construction advances the purpose of regulations 656.20.

Id. at 405. Accordingly, where the beneficiary named in an alien labor certification application has an ownership interest in the petitioning entity, the petitioner must establish that the job is *bona fide*, or clearly open to U.S. workers. *See Keyjoy Trading Co.*, 1987-INA-592 (BALCA Dec. 15, 1987) (*en banc*). A relationship invalidating a *bona fide* job offer may also arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 2000-INA-93 (BALCA May 15, 2000).

The ETA Form 9089 specifically asks in Part C.9: "Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?" The petitioner identified that it was an entity with five employees, and checked "no" to the question of whether the beneficiary was related to the owner. In determining whether the job is subject to the alien's influence and control, the adjudicator will look to the totality of the circumstances. *See Modular Container Systems, Inc.*, 1989-INA-228 (BALCA Jul. 16, 1991) (*en banc*). The same standard has been incorporated into the PERM regulations. *See* 69 Fed. Reg. 77326, 77356 (ETA) (Dec. 27, 2004).

The PERM regulation specifically addresses this issue at 20 C.F.R. § 656.17(l) and states in pertinent part:

> (l) Alien influence and control over job opportunity. If the employer is a closely held corporation or partnership in which the alien has an ownership interest, or if there is a familial relationship between the stockholders, corporate officers, incorporators, or partners, and the alien, or if the alien is one of a small number of employees, the employer in the event of an audit must be able to demonstrate the existence of a bona fide job opportunity, i.e., the job is available to all U.S. workers, and must provide to the Certifying Officer, the following supporting documentation:
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> (1) A copy of the articles of incorporation, partnership agreement, business license or similar documents that establish the business entity;
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> (2) A list of all corporate/company officers and shareholders/partners of the corporation/firm/business, their titles and positions in the business' structure, and a description of the relationships to each other and to the alien beneficiary;
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> (3) The financial history of the corporation/company/partnership, including the total investment in the business entity and the amount of investment of each officer, incorporator/partner and the alien beneficiary; and
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> (4) The name of the business' official with primary responsibility for interviewing and hiring applicants for positions within the organization and the name(s) of the business' official(s) having control or influence over hiring decisions involving the position for which labor certification is sought.

(5) If the alien is one of 10 or fewer employees, the employer must document any family relationship between the employees and the alien.

The petitioner has the burden of establishing that a bona fide job opportunity exists when asked to show that the job opportunity is clearly open to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987); *see also* 8 U.S.C. § 1361.

The record contains a copy of the petitioner's Articles of Incorporation in the State of California. The petitioner's Articles of Incorporation were filed with the Office of the Secretary of State for California on December 11, 2001, and list the beneficiary as both the petitioner's agent for service of process and incorporator. Counsel asserted that the beneficiary was in the United States and Canada when the petitioner was incorporated and that it was simply a matter of convenience that he was both the agent for service of process and the incorporator because the petitioner's owners remained in China.

The ETA Form 9089, the Form I-140 petition, and Forms W-2, Wage and Tax Statements, issued to by the petitioner to the beneficiary since 2003, all list the beneficiary's name as " In addition, the I-140 petition and Form W-2 statements list the beneficiary's Social Security number as " In attempt to establish its continuing ability to pay the beneficiary the proffered since the priority date of September 19, 2006, the petitioner submitted its Forms 1120, U.S. Corporation Income Tax Return, for 2006 and 2007. The petitioner's Form 1120 tax return for 2007 at Schedule E lists an individual named ' with Social Security number ' as an officer of the petitioner. In response to the RFE issued by the AAO on March 27, 2012, the petitioner provided its Form 1120 tax returns for 2008 and 2009. The Schedules E of the petitioner's Form 1120 tax returns for 2008 and 2009 also list an individual named ' with Social Security number ' as an officer of the petitioner. However, the record is absent any explanation as to why the beneficiary was listed as an officer on the petitioner's Form 1120 tax returns for 2007, 2008, and 2009 as rather than listing the beneficiary using his proper given name

As discussed previously, on appeal, counsel put forth the contention that the petitioner had two shareholders; ' a corporation registered in Hong Kong and an individual residing in Xinjiang, China," with owning 71% of the petitioner's shares and owning 29% of the petitioner's shares. Nevertheless, the petitioner's Form 1120 tax returns for 2006, 2007, 2008, and 2009 are accompanied by Forms 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade and Business, which reflect that owns a 25% interest in the petitioner and owns a 25% interest in the petitioner. Moreover, a review of the website at https://www.icris.cr.gov.hk/csci/search_company_name.do (accessed on September 4, 2012) revealed that in Hong Kong, China was dissolved by deregistration on January 27, 2006.

The fact that counsel and the petitioner's federal tax returns for 2006, 2007, 2008, and 2009. represent as a viable, active company that continues to retain an ownership interest in the petitioner despite the fact that was dissolved on January 27, 2006, seriously impairs the credibility of information and claims put forth regarding the petitioner in both the Form I-140 petition and the ETA Form 9089. The record is absent any credible evidence to establish the nature of the petitioner's ownership. Therefore, the AAO issued another separate RFE to the petitioner and counsel on September 13, 2012. In this RFE, the AAO requested that the petitioner provide evidence reflecting the specific nature of the relationship between the business entity and the petitioner and an explanation as to why a dissolved business entity continues to be portrayed as retaining an ownership interest in the petitioner.

In response, the beneficiary submits a statement in which he asserts that has never been active in managing the petitioner, but that played an active role in managing the petitioner. The beneficiary states that he only became aware of the dissolution of recently. The beneficiary declares that was working on the issue and the petitioner would soon undergo a restructuring.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* In the instant case, the record is absent any explanation as to why the beneficiary was listed as an officer on the petitioner's Form 1120 tax returns for 2007, 2008, and 2009 as ' ' rather than listing the beneficiary using his proper given name " " The record also contains contradictory and conflicting information regarding the structure of the petitioner's ownership. Without credible evidence to overcome these discrepancies, it cannot be concluded that the petitioner has made a *bona fide* job offer. Rather, the evidence in the record appears to establish that there was a pre-existing business relationship between the petitioner and the beneficiary that affected the job recruitment and labor certification process.

The director's determination that the petition was incorrectly approved because the beneficiary had a pre-existing business relationship with the petitioner is good and sufficient cause for the revocation of the approval of the immigrant petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.